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## MEMORANDUM

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**TO:** Western State Foresters and Territorial Foresters

**FROM:** Jay Jensen, Executive Director

**SUBJECT:** Roadless Rule Briefing Paper #3

**DATE:** June 6, 2005

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Please find attached a three-page background paper laying out the chronological history of roadless area consideration on National Forest System lands. Discussions with a number of State Foresters revealed the need for a more detailed history as they move forward in responding to the state petitioning provisions of the newly released rule (5/13/05 - <http://roadless.fs.fed.us/>).

Consider this the third installment in what is becoming our CWSF roadless area memo series. The first memo on petitioning options went out under my name on 5/20, followed by a Q&A memo by Amie Brown on 5/31. All three background pieces can be found on the members section of the WFLC website ([www.WFLCweb.org](http://www.WFLCweb.org)).

As before, you are encouraged to work with your Regional Forester for specifics on how the rule may affect your state and any specific procedural matters you might have. If you have any questions please give me a call (303-445-4366; [jay.jensen@colostate.edu](mailto:jay.jensen@colostate.edu)).

# **Background Information on Wilderness and Roadless Area Evaluation**

The wilderness concept began with the Forest Service in 1924 with the administrative designation of the Gila Wilderness in the Gila National Forest in New Mexico. Subsequently, additional Wilderness, Wild, Primitive or Canoe areas were administratively established by the agency, with these 87 areas totaling 14.6 million acres by 1964.

## **1964**

In 1964, Congress passed the Wilderness Act, creating the National Wilderness Preservation System (NWPS). Over 9 million acres of National Forest System land were designated. The 1964 Wilderness Act also directed the Secretary of Agriculture to study, by September 3, 1974, the suitability or non-suitability for designation as wilderness 34 administratively classified primitive areas, encompassing 5.5 million acres.

## **1970**

By the early 1970's many of the primitive area reviews had been completed and submitted to Congress. The remaining primitive areas were awaiting Congressional action or completion of the Forest Service's review. In 1972, the agency undertook an inventory and evaluation of all undeveloped areas within the National Forest System that could be considered for possible inclusion in the NWPS. This first roadless area review and evaluation (RARE I) effort concluded in October of 1973 with the selection of 274 wilderness study areas containing about 12.3 million acres. These selections were made from a total inventory of 1,449 areas containing 56 million acres. The reviews of these study areas were to be completed in the planning process.

## **1977**

In 1977 concerns were expressed that the planning process might be too slow for the timely completion of the reviews for the 274 study areas. In addition, there were also concerns that some areas might have been overlooked and that RARE I did not adequately inventory the National Grasslands or the Eastern National Forests. In response to these concerns, the Secretary initiated RARE II. RARE II was completed in January of 1979 and identified 2,919 areas containing just over 62 million acres; recommended that 15 million acres be added to the NWPS, 36 million acres be allocated to nonwilderness uses, and about 11 million acres be placed into a further planning category. The identification of these areas was based on the criteria that they met the definition of wilderness as per section 2(c) of the 1964 Wilderness Act.

## **1979**

In June of 1979 the State of California initiated a lawsuit challenging the RARE II decision to designate certain inventoried roadless areas in the State as nonwilderness. Both the U.S. District Court and the Ninth Circuit Court of Appeals agreed that the RARE II Final Environmental Impact Statement (FEIS) did not comply with the requirements of the National Environmental

Policy Act (NEPA). Following the Court's decision, the planning regulations were revised in 1983 to require the evaluation of inventoried roadless areas for potential wilderness in forest planning

### **1980**

In the 1980's Congress added millions of acres to the NWPS by enacting multiple Wilderness Acts on a state-by-state basis. To date, the NWPS contains approximately 35 million acres of National Forest System land.

### **2001**

Inventoried roadless areas had been evaluated for potential wilderness in the planning process for the development or revision of land management plans for all units of the National Forest System by the time planning had begun for the January 12, 2001, Roadless Area Conservation Rule (roadless rule). Inventoried roadless areas must be evaluated for potential recommendation as wilderness in the plan development and revision processes. Based on site-specific analysis and public involvement, management direction is developed for inventoried roadless areas during the planning process that could include: (1) protection of wilderness values in relation to an administrative recommendation to Congress that the area be designated wilderness; (2) total or partial restriction of certain uses and development activities such as road construction or timber management; or (3) minimal restrictions to resource management and development actions and other allowable uses. (1982 planning regulations, as amended; Forest Service administrative policy direction and guidance in the Directives System)

The roadless rule fundamentally changed the Forest Service's longstanding approach to management of inventoried roadless areas by establishing nationwide prohibitions generally limiting, with some exceptions, timber harvest, road construction, and road reconstruction within these areas of the National Forest System. These nationally-applied prohibitions superceded the management prescriptions for inventoried roadless areas applied through the development of individual land management plans, and would not have been able to be revisited through subsequent plan amendments or revisions.

The roadless rule has been the subject of nine lawsuits in Federal district courts in Idaho, Utah, North Dakota, Wyoming, Alaska, and the District of Columbia. As part of the legal challenge to the roadless rule by the State of Wyoming, the U.S. District Court for the District of Wyoming issued a permanent injunction and set aside the roadless rule on July 14, 2003. The court found that the roadless rule was promulgated in a manner that was illegal, both procedurally and substantively. The court ruled against the government on 5 of 6 claims under the National Environmental Policy Act, and also found that the roadless rule violated the Wilderness Act of 1964 because the timber harvest and road construction prohibitions constitute establishment of *de facto* wilderness (only Congress can designate wilderness areas). This decision has been appealed to the U.S. Court of Appeals for the Tenth Circuit.

### **2004**

In July 2004, Agriculture Secretary Ann M. Veneman proposed a rule that responded to the lengthy litigation of the 2001 rule. The proposed rule would establish a process for governors to work with the Forest Service to develop locally-supported rules for conserving roadless areas in their states. The proposed rule was published in the Federal Register on July 16, 2004, for a 60-

day public comment period (69 FR 42636). Due to public requests for additional time, the comment period was extended by 62 days for a total of 122 days. The Forest Service received approximately 1.8 million comments.

### **2005**

On May 5, 2005, Agriculture Secretary Mike Johanns announced the final State Petitions rule which replaced the 2001 roadless rule. Some of the key features of the rule include:

- Governors have until November 13, 2006, to submit a petition to the Secretary for State-specific rulemaking.
- This process is voluntary. If a Governor does not want to propose changes to the existing management requirements for inventoried roadless areas contained in currently approved land management plans, then no petition need be submitted.
- The Secretary is establishing a national advisory committee to assist with the implementation of this rule. Members of this committee will be representatives of national organizations interested in the conservation and management of inventoried roadless areas.
- The advisory committee will have 90 days to review each petition submitted and provide the Secretary with advice and recommendations. The Secretary has 180 days to provide a response to the petitioner.

The Secretary's response shall be to accept or decline the petition to initiate a State-specific rulemaking. If the Secretary accepts the petition, the Forest Service will be directed to coordinate with the petitioner to initiate a State-specific rulemaking that addresses the proposed changes to the management requirements for inventoried roadless areas put forth in the petition.

State-specific rulemaking will include publishing a proposed rule for public review and comment and preparing the appropriate National Environmental Policy Act (NEPA) documentation. Any final State-specific rule will be approved by the Secretary.